

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs June 5, 2007

**JOHNNY L. MCGOWAN v. STATE OF TENNESSEE**

**Appeal from the Tennessee Claims Commission  
Claim No. 20050632, Stephanie R. Reeves, Commissioner**

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**No. M2005-02465-COA-R3-CV - Filed July 17, 2007**

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A maximum security inmate of the Department of Correction, in administrative segregation, filed suit for damages against the State of Tennessee relying on Tenn.Code Ann. §§ 9-8-307(a)(1)(E) and 9-8-307(a)(1)(N). The State filed a Tenn. R. Civ. P. 12 Motion to Dismiss which was granted by the Claims Commission. Inmate appealed. The action of the Claims Commission is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission  
Affirmed**

WILLIAM B. CAIN, PJ., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Johnny McGowan, *pro se*.

Robert E. Cooper, Attorney General and Reporter; Arthur Crownover, II, Senior Counsel, for the appellee, State of Tennessee.

**MEMORANDUM OPINION<sup>1</sup>**

Appellant is a maximum security inmate in administrative segregation with the Tennessee Department of Correction. His Complaint is predicated on Tenn.Code Ann. § 41-1-403(1), which provides:

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<sup>1</sup>Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

**41-1-403. Classification system.** — A sound classification system is necessary for an efficient and manageable correctional system and because of its importance, the general assembly declares the following policy:

(1) The classification system shall provide a meaningful case evaluation of each inmate prior to permanent placement and a continuing review and reclassification process throughout the inmate's period of incarceration;

Tenn.Code Ann. § 41-1-403(1).

He alleges that he has been repeatedly denied reclassification under this statute. While the Complaint states conclusions about “[n]egligent care, custody and control of persons” under Tenn.Code Ann. § 9-8-307(a)(1)(E), the only acts complained of throughout the Complaint involve the refusal of Defendant to mandatorily reclassify him under the provisions of Tenn.Code Ann. § 41-1-403. He closes his Complaint with the assertion:

Claimant McGowan, Jr. submits that when the defendant's agents, staff and employees named herein and throughout this Claim negligently failed to follow the laws of the State of Tennessee which required that ‘all’ prisoners receive this continuing review and the reclassification process for the duration of their incarceration, this clearly expressed a concluded private right of action in favor of the claimant McGowan, Jr., against the State of Tennessee, and the State of Tennessee has no immunity, as a matter of established law.

I, Johnny L. McGowan, Jr., certify that the amount of (\$300,000.00) three hundred thousand dollars would cover damages and injuries cause by the negligent acts of the named agents, employees and staff of the defendant State of Tennessee, and (\$1,000,000.00) one million for each occurrence, while committing tort within the scope of their office (or) duties, and agree only to accept this amount in full for satisfaction and final settlement of this claim. Further claimant would accept the termination of employment of all agents, employees, and staff named herein.

After the Motion to Dismiss was filed, Appellant amended his Complaint so as to delete allegations under Tenn.Code Ann. § 9-8-307(a)(1)(N) and asserted that “This claim is presented under Tenn.Code Ann. § 9-8-307(A)(1)(E), negligent care, custody and control. This Claims Commission has subject matter jurisdiction over this issue as a matter of established law.”

The difficulty confronting Appellant is that the only acts of negligence charged against Appellee stem directly from the alleged failure of the Defendant to follow the provisions of Tenn.Code Ann. § 41-1-403 and reclassify him. The action is one for damages against the State and is clearly predicated upon the classification statute under Tenn.Code Ann. § 9-8-307(a)(1)(N), which involves “[n]egligent deprivation of statutory rights created under Tennessee law . . . .” The second sentence of that statutory provision grants “The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against

the state for the state's violation of the particular statute's provisions." Claimant is then faced with the opinion of this Court in *A'la v. State of Tenn.*, No. E2001-03133-OCA-R3-CV, 2002 WL 1838162 (Tenn.Ct.App. Aug. 13, 2002). In that case, both the majority opinion authored by Judge Franks and the concurring opinion by Judge Swiney make clear that the second sentence of Tenn.Code Ann § 9-8-307(a)(1)(N) preclude subject matter jurisdiction in the Claims Commission since the general assembly has provided no private right of action for damages under that section of the Code.

Aside from conclusory statements about negligent care and control, no facts are asserted in the Complaint other than facts related to the failure to reclassify and provide continuing review under Tenn.Code Ann § 41-1-403. The action of Appellant in amending his Complaint to delete his claim under Tenn.Code Ann. § 9-8-307(a)(1)(N) and leave only his complaint under Tenn.Code Ann § 9-8-307(a)(1)(E) serves only to buttress the basis for dismissal of his action since there are no factual allegations relative to negligent care, custody and control of persons.

The action of the Claims Commission is in all respects affirmed with costs assessed to Appellant.

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WILLIAM B. CAIN, JUDGE